

GAHC010061612022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2191/2022

BANOWARI RABIDAS @ BANOWARILAL RABIDAS
S/O. LT. GANGARAM RABIDAS, R/O. VILL. AND P.O. JHAWDANGA, DIST.
SOUTH SALMARA MANKACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER

SOUTH SALMARA KANKACHAR
P.O. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135.

3:THE ADDL. DEPUTY COMMISSIONER (REVENUE BRANCH)

SOUTH SALMARA KANKACHAR
P.O. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135.

4:THE CIRCLE OFFICER

MANKACHAR REVENUE CIRCLE
MANKACHAR
P.O. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR

ASSAM
PIN-783131.

5:THE ASSTT. SETTLEMENT OFFICER

MANKACHAR REVENUE CIRCLE
MANKACHAR
P.O. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131.

6:JHAWDANGA M.E. MADRASSA
REP. BY ITS HEADMASTER
P.O. JHAWDANGA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-783131

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : SC, REVENUE

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. M.K. Choudhury, Senior Advocate.
	: Mr. M. Khan, Advocate.
For State respondent No.1	: Ms. G. Hazarika, standing counsel.
For respondent Nos.2 to 5	: Mr. S. Baruah, standing counsel.
For respondent no.6	: Mr. M. Islam, Advocate.
Date of hearing	: 01.06.2023.
Date of judgment	: 30.08.2023.

JUDGMENT AND ORDER

(CAV)

Heard Mr. M.K. Choudhury, learned senior counsel, assisted by

Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned standing counsel for the Revenue Department, respondent no.1, Mr. S. Baruah, learned Govt. Advocate appearing for respondent nos.2 to 5, and Mr. M. Islam, learned counsel for the respondent no.6.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the letter dated 03.03.2022, issued by the Additional Deputy Commissioner, South Salmara Mankachar (respondent no.3) as well as notice dated 24.03.2022, issued by the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no.5), thereby directing the petitioner to remove his allegedly illegal construction from a part of land measuring 5 bigha- 01 katha- 14 lessa, covered by dag no. 154/119 within 3 (three) days, otherwise the petitioner was threatened of eviction. The petitioner has also prayed for a direction to the respondent authorities to allot land measuring 1 katha- 14 lessa of Dag no. 154/119 of Jhowdhanga Revenue Village in his favour.

3. The learned senior counsel for the petitioner has submitted that the father of the petitioner, namely, Late Gangaram Rabidas was the *pattadar* of a residential land measuring 3 katha- 6 lessa, covered by Dag no. 118/153 of patta no. 17/231 situated at village Jhowdhanga and that his father had died in the year 1996. It was submitted that adjacent to the said land, there is a Govt. *khas* land measuring 1 bigha- 1 katha- 14 lessa, covered by Dag no. 154/119. The petitioner claims that since the year 1937, the said land is under his possession through his predecessor- in- interest. It is claimed that out of the said land, the petitioner has a residential house on land measuring about 1 katha- 14 lessa, and the remaining land was under cultivation. On 11.05.2021, Janki Robidas, the wife of the petitioner had submitted an application before the

Deputy Commissioner, South Salmara, Mankachar for granting allotment of 1 bigha land covered by Dag No. 119 to her. The said application was forwarded to the Assistant Settlement Officer, Mankachar (respondent no.5) on 05.06.2021. On 15.12.2021, the petitioner had submitted another application before the respondent no.2 to take necessary steps so that his possession over the land measuring 1 katha, covered by dag no. 119 of village Jhowdhanga Part-III is not disturbed.

4. The learned senior counsel for the petitioner has submitted that a part of the land of the petitioner measuring 1 bigha out of his land was vacated on assurance made by Circle Officer, Mankachar Revenue Circle (respondent no.4) who had visited the said land had assured that on vacating the said land, the plot where his residence is constructed would be allotted to him. However, after the petitioner had vacated the said land, process was being initiated to allot the said land in the name of Jhowdhanga M.E. Madrassa, although the said Madrassa is situated in a different campus covered by dag no. 120 with *pucca* boundary. It is submitted that the petitioner had no objection if his 1 bigha land is allotted to the school, but insofar as the area of 1 katha- 14 lessa land is concerned, where the residential house of the petitioner is situated, should be allotted in favour of him as his predecessor and thereafter he is residing in the said land since the year 1937.

5. It has been submitted that however, instead of allotting the land, the petitioner has been served with a letter dated 03.03.2022, by which the Additional Deputy Commissioner, South Salmara, Mankachar had directed the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no. 5) to initiate an eviction case against the encroacher of the school land and it was

mentioned that the school was on the land measuring 5 bigha- 1 katha- 14 lessa covered by dag no. 154/119 of village Jhowdhanga Part-III. The petitioner had submitted a representation dated 05.03.2023 with prayer for allotment of land and reiterated that his possession should not be disturbed. It has been submitted that the petitioner had filed an application under RTI Act for information regarding (i) the report of the Land Advisory Committee, (ii) copy of the Allotment Order, and (iii) Lot Mandal's report in connection with the allotment of land of Jhowdhanga M.E. Madrassa, covered by dag no. 154/119 of revenue village Jhowdhanga Part-III, which was never provided.

6. By referring to the affidavit-in-reply filed against the counter affidavit filed by respondent no.2, it has been submitted that the respondent no.2 appears to be not sure as to whether the land belongs to the Govt. or it is the land allotted to the school. It is submitted that there is also no clarity as to the date when the land came to the possession of the school as to whether it was on or before 03.07.1986 or whether the said school was established in the year 1881. It was also submitted that if the area encroached by the petitioner was 5 bigha- 1 katha- 14 lessa, in that event, there is no clarity as to where the school was located.

7. Referring to the affidavit-in-reply filed against the counter affidavit by the respondent no.6, the learned senior counsel for the petitioner has reiterated that there is no clarity about the date on which the school had acquired the possession of the land. It is submitted that the petitioner had taken a stand to the effect that the land of the school was covered by a boundary wall and accordingly, it is submitted that the petitioner could not have allegedly encroached any of the land within the school boundary. Accordingly, it is

submitted that the petitioner has been able to show that the land which is occupying is outside the school boundary and therefore, his right has to be determined before summarily ejected from the school premises. In this regard, the learned senior counsel for the petitioner has referred to the provisions of Rule 18(2) of the Rules under the Assam Land and Regulations, 1886 and it was submitted that the petitioner has a *bona fide* claim in respect of the land occupied by him. By referring to the decision of this Court in the case of *Dhunseri Petrochem & Tea Ltd. v. State of Assam*, (2018) 6 GLR 125: 2018 (2) GLT 814, it was submitted that the petitioner is required to be heard on account of his claim of having occupied the land for a considerable length of time since the year 1937. In this regard, reference was made to paragraph 12 of the affidavit-in-opposition filed by the Deputy Commissioner, South Salmara, Mankachar (respondent no.2), wherein it has been stated as follows: "... *The school was running since 1981. The petitioners have encroached Govt. land since 1981 ...*".

8. Per contra, the learned Govt. Advocate has submitted that the land on which the Jhowdhanga M.E. Madrassa is located was donated by the *pattadars* and that as the school has been provincialized, all the property of the said school had vested in the Govt. It was submitted that although the eviction process was ordered to be carried out on 28.03.2022, but on the said date, the eviction process could not be carried out by the District Administration due to the ongoing examination of HS/HSLC and AHM and *chakka bandh* called by the All India Trade Union. However, the Assistant Settlement Officer-cum-Circle Officer had received information that boundary wall of the school was being demolished, the said authority had rushed to the spot with police personnel and found that the boundary wall of Jhowdhanga M.E. School was being demolished

by some persons with an excavator. It is submitted that the petitioner's family is the owner of a plot of land and therefore, under the land policy of the State, the petitioner would not be entitled to any further allotment of land. It has been submitted that the petitioner had encroached the Govt. land and therefore, the action against the petitioner was justified.

9. An issue has cropped up relating to the report dated 31.03.2022 by the *Lot* Mandal and in this regard, the learned senior counsel for the petitioner has submitted that this Court by order dated 25.03.2022, amongst others, issued a direction to the Additional Deputy Commissioner, South Salmara, Mankachar, Circle Officer, and the Assistant Settlement Officer (respondent nos.3, 4 and 5 respectively) to place related information relating issuance of the impugned eviction notice dated 24.03.2022 to the petitioner.

10. In response, the learned Government Advocate has submitted that pursuant to the said direction, a note was forwarded to the Circle Officer for the report, and accordingly, under the direction of the said authority, the Lat Mandal had prepared a report dated 31.03.2022 pursuant to the communication dated 30.03.2022, wherein it is reported that the petitioner had made illegal construction over the school land and it was further reported that on verification of records, it was seen that in dag no. 119, there was 4 katha- 12 lessa land and 4 bigha- 2 katha- 2 lessa land was in dag no. 120, which was patta land and that as per the *chitha* entry, 18 numbers of pattadars were there and that all the pattadars on 03.07.1986, offered their NOC in respect of the entire land covered by the said dag bearing 5 bigha- 1 katha-14 lessa, which was handed over to the school which was recorded in the *chitha* and it was also reported that Jhowdhanga L.P. School was established on 16.11.1881 and that

Jhowdhanga M.E. Madrassa was established in the year 1924 and Jhowdhanga High School was established in the year 1967 and that in the year 1990, Jhowdhanga High School was shifted to Jhowdhanga Part-II. Accordingly, the learned Govt. Advocate had justified the action of the respondents.

11. The learned counsel for the respondent no.6 had made submission similar to the submission of the learned Govt. Advocate and it was submitted that contrary to what has been claimed by the petitioner, during the Covid-19 lock-down, when the school was not physically functioning, the petitioner had encroached 3 lessa of school land by constructing a toilet and had extended his house by $1\frac{1}{2}$ feet. It was submitted that a temple was also constructed, but the petitioner had removed the same. It was submitted that the boundary wall of the school was constructed by the Panchayat and in addition to the high land, the school campus also has low lying land, which was gradually being filled up by the Panchayat and that the petitioner had encroached the school land. It was submitted that the land on which eviction is sought to be carried out is a Govt. land, which is allotted in the name of the school and in this regard, it was submitted that by dint of provincialisation of the school, the property/land which was owned by the school stood vested on the State Govt.

12. Upon hearing the learned senior counsel for the petitioner, and the learned counsel for the respondents, considered the writ petition, affidavit-in-opposition filed separately by the respondent nos. 2 and 6, and two affidavits-in-reply filed by the petitioner together with documents appended thereto.

13. At the outset, it is seen from the copy of the *chitha* (Annexure-

IV), annexed to the affidavit-in-opposition filed by the respondent no. 2 that the petitioner holds land in his name. Therefore, the learned Government advocate has been able to demonstrate that under the Land Policy of the State, the petitioner would not be entitled to any further allotment of land. Therefore, the Court finds that the petitioner is not entitled to the relief of issuance of a direction upon the State respondents to pass an order for allotment of land in favour of the petitioner.

14. Therefore, the only issue left is to examine if the eviction process initiated by the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no. 5) against the petitioner vide notice for eviction dated 24.03.2022 is sustainable on facts and in law.

15. It is seen that except for a statement made in the writ petition that since the year 1937, the petitioner through his predecessors has been occupying Government land measuring 1 bigha- 1 katha- 14 lessa, covered by Dag no. 154/119, out of which 1 bigha land has been vacated, no document in that regard has been annexed by the petitioner in his writ petition and two affidavit-in-reply. The claim of the petitioner is that he had vacated 1 bigha land on assurance made by the respondent no. 4 also remains unsubstantiated by any document on record. The petitioner claims that his residential house is constructed on Government land measuring 1 katha- 14 lessa, covered by Dag No.119. However, contrary to the same, the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no. 5) had informed the petitioner vide notice no. MKC(S)-1/Pt/2022/54 dated 24.03.2022, that he was encroaching Government land and that the land measuring 5 bigha- 1 katha- 14 lessa, covered by Dag no. 154/119 of Revenue Village- Jhowdhanga Pt.III belonged to

Jhowdhanga ME Madrassa.

16. Moreover, in the report of the *Lot* Mandal, Mankachar Revenue Circle, which is annexed as Annexure-1 to the affidavit-in- opposition filed by the respondent no.2, it has been mentioned that in the remark column of the *chitha* the Government land measuring 5 bigha- 1 katha- 14 lessa is recorded in the name of Jhowdhanga Primary M.E. and High School. It is also mentioned that there is 4 katha- 12 lessa land in Dag No. 119 and 4 bigha- 2 katha- 2 lessa land in Dag No. 120. It is also mentioned that 4 bigha- 2 katha- 2 lessa land of Dag no. 120 was a patta land of 18 *pattadars*. But it was seen that on 03.07.1986, all the *pattadars* had given their no objection in the *chitha* for handing over 5 bigha- 1 katha- 14 lessa to the schools. It is also recorded in the said report that on 16.11.1881, Jhowdhanga L.P. School was set up on the said plot of land and later on, in the year 1924, Jhowdhanga M.E. Madrassa was also established on the same land and that in the year 1967, Jhowdhanga High School was also established on the same land. However, in the year 1990, Jhowdhanga High School was shifted to Revenue village Jhowdhanga Part-II and the Jhowdhanga L.P. School and Jhowdhanga M.E. Madrassa remained on the said land. Therefore, it appears that in para-12 of the affidavit-in-opposition filed by the respondent no. 2, the year "1881" in which Jhowdhanga L.P. School was established, is wrongly typed as "1981". The said typing error, being contrary to contents of para-4 of the same affidavit as well as the *Lot* Mandal's report dated 31.03.2022, enclosed as Annexure-1 thereto, is ignored.

17. The learned Government Advocate has given a plausible explanation as to the reason why the school land is recorded as Government land. Moreover, the contents of the *chitha* annexed as Annexure-E to the

affidavit-in- opposition filed by the respondent no. 6 is sufficient to establish that as per the remark made by the *Lot* Mandal dated 05.06.2017, the Government land measuring 5 bigha- 1 katha- 14 lessa, covered by Dag No. 154 of *Lot* no. 8 of Village- Jhowdhanga Part-III, Mouza and Circle - Mankachar is under possession of Jhowdhanga L.P. School and Jhowdhanga M.E. Madrassa.

18. Under the facts and circumstances as discussed herein before, the petitioner is not found entitled to land allotment. Therefore, when 5 bigha- 1 katha- 14 lessa land under present/ current/new Dag No. 154 of *Lot* no. 8 of Village- Jhowdhanga Part-III, Mouza and Circle – Mankachar is under possession of Jhowdhanga L.P. School and Jhowdhanga M.E. Madrassa, the interest of the petitioner must give way to the greater public interest, which is to allow the Jhowdhanga L.P. School and Jhowdhanga M.E. Madrassa to enjoy their land free of any encroachment. The possession of the said two schools over 5 bigha- 1 katha- 14 lessa land, thus, cannot be said to be in dispute, save and except the portion of land encroached by the petitioner. Therefore, the petitioner is not found entitled to his prayer for setting aside the letter dated 03.03.2022 (Annexure-3) from the Addl. Deputy Commissioner, South Salmara Mankachar (respondent no. 3), addressed to the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no. 5), and the notice no. MKC(S)-1/Pt/2022/54 dated 24.03.2022 (Annexure-5) issued to the petitioner by the Assistant Settlement Officer, Mankachar Revenue Circle (respondent no. 5).

19. The interim order dated 25.03.2022, passed by this Court, thereby staying the eviction process of the petitioner on part of land measuring 5 bigha- 1 katha- 14 lessa, covered by Dag No. 154/119 of Revenue Village Jhowdhanga Part-III under Mankachar Revenue Circle of South Salmara

Mankachar District is vacated.

20. Resultantly, this writ petition fails and is dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant